GOVERNMENT OWNERSHIP OF PUBLIC UTILITIES

FROM THE STANDPOINT OF CONSTITUTIONAL LIMITATIONS.

IN the great and widespread industrial warfare which is being waged in this country, no one occurrence has brought so forcibly to the attention of the people at large the portentous significance of this strife to the whole nation as has the great strike in the anthracite coal regions of Pennsylvania. The close observer and intelligent student of public affairs ought not to be surprised to observe, as one of the more remote consequences of this strike, an increase of the receptivity of the public mind to the principles of thoroughgoing socialism. To my mind, this tendency of thoughtful minds to subscribe to and indorse socialism is one of the serious dangers to our present civil polity, which, as is well known, is based upon the principles of individualism.

If we were living in an European country, there would be no occasion for the penning of this paper, for I am not a political economist, nor do I propose to present here an economic argument for or against the government ownership of public utilities. But American constitutional law imposes upon the courts of this country the imperative duty to declare legislation to be unconstitutional and void which contravenes some provision of the constitutions, national and state. And it is a matter of common information that the courts are not loath to pronounce their veto upon legislation which restricts personal liberty or interferes unconstitutionally with the continued possession and enjoyment of vested rights. It seems to me, for these reasons, that the constitutional aspect of the proposition for the government ownership of public utilities, and the distinction which the political economists make between that proposition and the principles of socialism, may be a timely subject for the consideration of students of jurisprudence. This is the purpose and subject of this paper.

If a business or occupation is absolutely and inherently harmful to society, or fraudulent in character, it matters not how or by whom it is carried on, the only possible effective police regulation is the total prohibition of such trade or business. But it may

happen that a trade or business is inimical to the public welfare only when it is left open to all who may choose to follow it; and that the menace to the interests of the commonwealth may be eliminated by the prohibition of such trade or business to individuals, and the grant to a few of the exclusive right to carry on the trade or business as a statutory monopoly. The adjudications have made it very plain that such a monopoly cannot be created out of an ordinary trade or business without violating the constitutional right of every man who desires to engage in it. Every man has a right, under reasonable regulations, to pursue any one of the ordinary callings of life as long as his pursuit of them does not involve evil or danger to society. A law which granted to one man, or to a few men, the exclusive privilege of prosecuting such a trade or business would be a clear violation of the constitutional rights of those who had been thereby prohibited from engaging in the same business or occupation.[1] When, however, the state bestows upon one or more persons the exclusive privilege of engaging in a business which but for this grant of the privilege was not open to any one because it is not possible without governmental aid for any one to conduct it, whatever other constitutional objection may be raised to such a grant of a monopoly, it is not objectionable because it has violated anybody's right to engage in the trade or business; for the trade or business never existed before the grant of the monopoly, and, with the repeal of the statute which created it, would disappear all right to carry it on.

In order that a railroad or bridge may be constructed, or a gas or water plant be established, by private individuals, the government must grant to the parties who purpose its construction a franchise or privilege which is not enjoyed by individuals in general, and which is not procurable in any other way than by express legislation. In the case of the bridge or railroad the privilege or franchise is the right of eminent domain, whereby the railroad or bridge company may appropriate to its own use, upon payment of compensation, the lands of private owners which may be needed for the construction of the projected railroad or bridge. It is possible that the land which may be needed for a bridge might be procurable in ordinary cases by voluntary purchase; but this is hardly possible in the case of a railroad. And, even when

[1] This is so elemental a proposition of constitutional law that I have not considered it necessary in this connection to cite authorities. I may, however, refer the reader for them to my "State and Federal Control of Persons and Property."

such an unusual event occurs as that a railroad acquires its entire road-bed by purchase, the possession of the right of eminent domain exercises a powerful influence in its efforts to secure the necessary land by voluntary purchase. Furthermore, in the establishment of a bridge or ferry over and across a navigable stream, the consent of the government to this extraordinary use of the stream must first be obtained. This in itself is a franchise, not enjoyable except by special grant.

Prior to the present century the government has exercised this right of eminent domain by condemnation for direct governmental purposes only. The limitation of the right of eminent domain — that it cannot be exercised in order to transfer one man's land to another, even upon payment of full value — has in days gone by led to the construction that to make it a *public use*, to which the condemned lands were to be applied, there must be a direct or immediate use, as for public parks, buildings and highways, levees on the river bank, and aqueducts, drains, and sewers, all of which are the direct property of the state. But in the present century changes in the economic conditions, inventions like the steam-engine, and advances in the science of engineering, all have combined to demand facilities for transportation and locomotion from place to place, which could alone be provided by the construction and maintenance of railroads, street railways, and numerous bridges. This new economic demand arose at a time when the *laissez-faire* philosophy was in complete ascendancy, when the popular mind would have been startled by the proposition that the government should embark in the business of railroading. At the same time the people demanded the facilities which the railroad would afford. The railroad could not be constructed without condemning sufficient private land between the two termini of the projected road to enable the construction of a continuous roadbed. But would not the taking of these lands by the railroad, with the consent of the state, be a taking of one man's land and giving it to others, the incorporators of the railroad? The legal profession came to the rescue, and suggested that "public use" must be interpreted, in determining the limitations of the right of eminent domain, as meaning "public good" or "public purpose"; and the railroad was declared to be a quasi-public corporation.[1] The

[1] See Fisher *v.* Manufacturing Company, 12 Pick. 67; People *v.* Township Board of Salem, 20 Mich. 452; and especially the opinion of Chancellor Walworth in Beekman *v.* Schenectady, etc., R. R. Co., 3 Paige 45, 73, 22 Am. Dec. 679.

conclusion reached was that, since the railroad was a quasi-public corporation, whose business would promote the public welfare by furnishing better means for transportation of goods and passengers, land which was confiscated for railroad purposes in the exercise of the assigned right of eminent domain was devoted to a public purpose, and not to a private use. This development of the law of eminent domain, leading to the general assignment of the right of eminent domain to all private corporations which, like the railroad or bridge companies, are designed to satisfy some public want, is directly traceable to the universal aversion to having the government engage in such affairs which was prevalent when railroads were first constructed, and which is still felt by the majority of our people. If, however, the popular conceptions of the general relation of the state to industrial affairs had been then as they are now with a strong minority of our people, it is very likely that the legal obstacles to the grant to private corporations of the right of eminent domain would have led to the building of railroads and bridges by the government.

If the established rule is open to constitutional objection, it will not be on the ground that it violates the right of the individual to build and construct a railroad or bridge, to construct and conduct railways in the streets and highways, to lay down conduits, pipes, and wires in the streets and highways for the transportation from place to place of water, gas, electric light, and oil. In all of these cases no one has a right to do any of these things without a special grant of the privilege.

It has been held in some early cases, that an exclusive grant to a company to furnish a city with gas is unlawful and void, because it is the creation of a monopoly.[1] The Connecticut court, in rendering this judgment, rested its decision on the ground that "the business of manufacturing and selling gas is an ordinary business, like the manufacturing of leather or any other article of trade, in respect to which the government has no exclusive prerogative"; completely ignoring the fact that the gas could not be distributed to consumers unless continuous beds for the pipes were secured, either by the extraordinary use of the public streets, or by the appropriation of private lands in the exercise of the delegated right of eminent domain. Judicial opinion throughout this country has advanced very far beyond this position of the court in

[1] Norwich Gas Light Co. *v.* Norwich City Gas Co., 25 Conn. 19.

the case just cited, and it is now the accepted principle of constitutional law that the grant of such an exclusive franchise is a constitutional exercise of governmental power.[1]

Although, because of the argumentative character of this paper, no attempt has been made to give a full citation of authorities in support of the proposition advanced, I feel assured the reader who is conversant with the constitutional limitations of American governments will readily concede the soundness of these two propositions: *First*, if a business cannot be conducted by any one except under and with the aid of a grant by the government of some special privilege or franchise, the government may make of that business a more or less exclusive monopoly without violating anybody's natural right to carry it on. *Secondly*, if a business can be successfully conducted by a natural person or private corporation without government aid in the nature of a grant of a special franchise or privilege, there can be no prohibition of carrying on the business unless it is of such a nature that, if left open to individual enterprise, injury to the public cannot be avoided. If it be of such a nature, the business may be prohibited to the average person, and be converted into a more or less exclusive monopoly without unduly restricting the personal liberty of the citizen.

In this discussion of the right to create monopolies, the constitutionality of their creation has so far been chiefly considered from the standpoint of the individuals who have been prohibited by law from the prosecution of a lawful and ordinary calling or business because it has been converted by statute into a more or less exclusive monopoly and granted as such to a few persons or corporations.

But there is another and a very important standpoint from which we should consider the creation of these statutory monopolies. Does not the grant of exclusive or monopolistic privileges to a few persons or private corporations, even in the apparently necessary and justifiable cases which I have just described, conflict with our constitutional declarations of the equality of all men before the law, and with the constitutional guaranty to all of equal privileges and immunities? Is it a sufficient answer to such a question to say that public interests forbid that any and every

[1] See, by way of illustration, New Orleans Gas Co. *v.* Louisiana Light Co., 115 U. S. 650; Louisville Gas Co. *v.* Citizens' Gas Co., 115 U. S. 683; Long Island Water Supply Co. *v.* City of Brooklyn, 166 U. S. 685.

person who has the required capital should be permitted to construct a railroad, a street railway, a gas, electric light, water, telegraph, or telephone plant; that, on the other hand, these conveniences are public necessities, and that there is no alternative but to make more or less exclusive monopolies of them? Granted that individual capitalists cannot be allowed indiscriminately and without restraint to exercise the right of eminent domain, and to tear up the streets of a city in order to lay down conduits, pipes, and tracks; it does not necessarily follow that the right to do these things should be granted as a private monopoly to a few persons or corporations. If there was no other alternative to the creation of such private monopolies but the denial of these conveniences and necessities to the people, the law of overruling necessity would amply justify this patent and unmistakable violation of our constitutional guaranty of equal privileges and immunities. But there is another and a very feasible alternative. It is this: whatever business or industry cannot be left open to the free choice of all persons without favor or discrimination — subject only to reasonable regulations for the protection of the public and of individuals against fraud and other wrongs and dangers — should and can be made a government monopoly, instead of being granted to private individuals or corporations. A government monopoly certainly does not violate either the individual's right to carry on such a business, or the constitutional guaranties of equality and of equal privileges and immunities. And I shall attempt subsequently to show that there is no other constitutional objection to government monopolies in the cases indicated.

The courts have, in their adjudications, gone very far beyond the legal and political conceptions which prevailed in the early years of the nineteenth century, and which led prominent statesmen and jurists to speak contemptuously of the general declarations of the inalienability of certain personal rights which appear in all of our constitutions, national and state, as "glittering generalities."

Treatises upon constitutional law,[1] in the discussion of the constitutionality of regulations of the contractual relation of employer and employee, of the statutory prohibition or regulation of trade combinations, both capitalistic and labor, contain an invariable

[1] It is probably permissible in this connection to refer to my own "State and Federal Control of Persons and Property."

appeal to the fundamental principles of American constitutional law: that all men are born free and equal; that no man shall enjoy privileges, which are not open to the equal enjoyment of all. The courts have, with very few and apparently justifiable exceptions, denied the right of the government to interfere with the contractual relations of employer and employee, because such an interference would be a curtailment of the personal liberty of the parties to the contract; and this policy of non-interference is justified by an appeal to the individualistic principle that the best interests of mankind are promoted by compelling every man, the strong and the weak alike, to rely upon his own resources, unaided by the artificial aid or support of the government. So, likewise, in sustaining the constitutionality of statutes which prohibit trade combinations and virtual monopolies, the innumerable industrial trusts and monopolistic trade corporations of the present day, the Supreme Court of the United States extols the idea of preserving from extinction the small tradesman, artisan, and manufacturer, and the consequent limitation of the concentration of large wealth into the hands of a few.[1] But can this judicial and legislative attitude be reconciled with the grant to private individuals and corporations of valuable franchises by which they are enabled to accumulate vast fortunes in supplying the necessities of the people? Does the grant to private capitalists of a street-railway franchise differ in constitutional principle from the conversion of the street or highway itself into a turnpike road which the people can use only upon the payment of a toll?

It is certainly a case of judicial inconsistency to deny to the legislature the right to interfere with the liberty of contract of the individual for the purpose of regulating the price of wages and goods, and at the same time to increase the natural power of control which the capitalist, by the mere possession of his capital, already has over the rest of his fellow-citizens, by granting to him a privilege or franchise to supply a common and universal necessity. In this connection I am reminded of the couplet from Goethe's Faust, illustrative of the chief cause of the French Revolution:

> " Ich kann mich trefflich mit der Polizei
> Doch mit dem Blutbann schlecht mich abzufinden." [2]

[1] See the opinion of Mr. Justice Peckham in the Trans-Missouri Freight Association case, 166 U. S. 290.

[2] Roughly translated, the couplet may read: "I can accommodate myself excellently with the police (police regulations), but badly with the hereditary monopoly (Blutbann)."

The hereditary monopoly (Blutbann) of the eighteenth century does not, except as to subjects, differ materially from the statutory monopolies of the nineteenth century, in the minds of those who are yearning after the unattainable equality of all men. A substantial equality cannot be established among men by law; but the government can at least abstain from increasing the natural inequalities of life by giving to the already stronger the complete control of the avenues of communication and locomotion which every one is obliged to employ. There is only one way whereby the seeming equality of all men may be established in these conspicuous cases of governmental favoritism to the stronger; and that is, the conversion of all of these necessary monopolies from private into government monopolies.

Arguments to prove that, under the governmental regulation of rates and fares, the people get from these private statutory monopolies the necessary service, in the aggregate, at less cost to themselves than if they were government monopolies, are absolutely unavailing, even if they were believed to be true, against the sentiment that this economic advantage has been gained by a conspicuous sacrifice of the democratic principle of equality before the law.

The advocate of private franchises, however, may say: It does not come legitimately within the sphere of government to assume the administration of a business like that of a railway, a telephone or telegraph company. But that, at best, is a dogmatic assertion, unless it can be shown that there is an insuperable obstacle in the positive law of the country to government monopolies. It will not be sufficient to point to the experience of the past one hundred years, as proof of the claim that it is not one of the functions of the government to engage in such enterprises. In all parts of the civilized world, to-day and for the past century, the transportation of the mails has been a government monopoly. The highways in most cases are owned and maintained by the governments for the use and convenience of the people; while the railroads, the telegraph and telephone lines, in Europe and Australia, are for the most part in the hands of the government. In this country the waterworks are almost invariably the property of the cities which are supplied by them; while the number of cities and towns which own and conduct their electric and gaslight plants is rapidly on the increase. The bridges which span the rivers in contiguity to cities have been built and are

owned by these cities; while for years the cities of New York and Brooklyn have maintained and run the cable cars on the Brooklyn Bridge. Some years ago the people of the old New York City, now the Boroughs of Manhattan and Bronx of the present New York City, voted overwhelmingly in favor of the construction, ownership, and management by the municipal government of an underground rapid-transit railway.

But the opponent of government monopolies may inquire still further: If the government can rightfully and constitutionally engage in these, which have been heretofore considered private enterprises, what hindrance is there to the universal adoption in this country of socialism? If it is a legitimate function of government to manufacture and sell gas and electric light, to transport passengers and goods from one point to another, why is it not an equally legitimate function of government to manufacture and sell cloth and sugar, kerosene oil and iron and coal; to cultivate the fields and grow the various foods which are needed for the people's sustenance; to raise cattle and to prepare meat for consumption and to sell the same? Attention is drawn to the fact that in many of the countries of Europe the preparation and manufacture of tobacco and cigars have been for many years a government monopoly. And the fear is expressed and most seriously felt by a large proportion of those who give thought to these matters, that the nationalization of railroads and the municipalization of street railways, water works, gas and electric light plants, and the like industries, will lead inevitably to the general adoption of the principles of socialism.

If there were nothing in our constitutional law which might serve as a check upon the growth and extension of socialistic ideas and demands but the settlement of the vague query what are and what are not legitimate functions of government, we would be in the same condition of helplessness before a socialistic legislature as would be the people of Europe. But I submit that the courts of the country, and particularly the Supreme Court of the United States, would not find it difficult to draw a line, on fundamental constitutional principles, beyond which the state and municipal governments could not go in the absorption of what have heretofore been private enterprises. The courts have already drawn that line, as I have indicated, namely, that only those businesses can constitutionally be converted into government or other monopolies which cannot be left open to private competition without endangering the public welfare in some way.

As long as the judicial attitude has not been changed from its present opposition to unreasonable interferences with the liberty of contract, and its delimitation of the trades and occupations which can and cannot be prohibited to individuals, there is no reasonable ground for fearing that the city and state governments will be permitted to engage in the truly private business of trade and manufacture. The liberty to pursue any lawful calling, subject only to the reasonable police regulations which may be needed to protect the public and individuals against injury and fraud, is too well grounded in our constitutional law and in the every-day thought of the people to justify us in entertaining any serious or reasonable fear of socialism for generations to come.

The questions of political economy and practical politics which crowd one's mind and jostle each other at the thought of government monopolies, — growing out of the corruption of politics, the popular distrust in the honesty and efficiency of public officials, and the more or less general fear that through dishonesty or recklessness these government monopolies might prove costly experiments — deserve the most serious consideration, although the purpose of this paper will preclude an extensive discussion of them in this connection. Our experience with the postal service for a century, and the experience of the cities which have owned and conducted their water works and gas and electric light plants, seem to me in the main to stamp those fears of government ownership of these franchises as without serious foundation. It is well in this connection to bear in mind, as Mr. Bryce in his "American Commonwealth" has so forcefully pointed out, that the corruption and inefficiency which are so common in American politics would not be tolerated by the American people if they did not feel that in their constitutional limitations on the powers of the government, they had sure safeguards against any serious injury to their substantial interests which they might otherwise anticipate from the low state of their politics. When the substantial interests of the community are threatened by the corruption or inefficiency of officials, — as they would surely be if the government owned and conducted all of these statutory monopolies, — the same class of officials will no longer be tolerated.

It must also be borne in mind that under such a policy our financial giants would no longer be absorbed in the management of railroads, electric light, gas, telegraph and telephone companies, as private corporations, but their services would be sought and

required for the successful administration of these large government monopolies. Inasmuch as they would be deeply interested in their success as holders of the bonds which the government would have to issue to them in payment for the property which they would expropriate in the condemnation of the existing statutory monopolies, and for the extension and enlargement of them, public life and public office would then have an attraction for such men which they do not now have. They, the real rulers of the country to-day, as they would be under the new regime, would make very short work of the too often vulgar and corrupt men who are permitted, by the indifference of the substantial men of the country, to occupy the inferior and subordinate offices of the government.

Fifty years or more ago, the principles of individualism exerted over the political and legal thought of the country so powerful and widespread an influence that if it had then been proposed that a city government should assume the monopoly of supplying its inhabitants with gas or water, the judicial veto of such legislation would have been both decisive and general, on the ground that the government of the municipal corporation was only a local branch of the state government, and that it was not one of the functions of the government, either national, state, or municipal, to engage in the private business of vending water or light to private consumers. But the popular demand for the embarkation of municipal corporations in these enterprises of general utility became irresistible; and in numerous cases the creation of municipal monopolies of the character described has been declared to be a constitutional exercise of legislative power. What the legislature of a state may authorize a city government to do, in the establishment, as municipal monopolies, of water works, gas and electric light plants, street railways, etc., without violating any constitutional limitation or transcending the legitimate functions of government, the state or national governments may do likewise within their respective jurisdictions, in the absence of express constitutional limitations.

While, as has been already indicated, municipal monopolies have become rather common, and their existence and maintenance have accustomed the public mind to this somewhat radical departure from former conceptions of the proper functions of government, in only two cases have state or national governments in this country established state monopolies, as distinguished from

municipal monopolies, which have stood the test of an appeal to constitutional limitations. These are the postal department of the general government, and the liquor monopoly which has in recent years been established in South Carolina under the so-called dispensary law. There are, in addition to these, a number of canals which are owned and operated by state governments, and a treaty has just been ratified by the Senate of the United States, which provides for the acquisition and management by the United States of a ship canal across the Isthmus of Panama, and the incidental ownership or control of the Panama Railroad.

The right of the national government to establish the post-office and to provide for the transmission of the mail as an exclusive government monopoly could not in any event have been questioned, for the Constitution of the United States contains an express authorization of such a national monopoly; but, apart from this express authorization, the universality of this government monopoly would have probably been considered by the United States courts a complete answer to any constitutional objection which might have been raised, in accordance with the constitutional rule of construction which the United States Supreme Court adopted in the legal-tender case of Juillard *v.* Greenman.[1] In this case the court held that the national government may exercise any power which was commonly recognized by the civilized world as a function of government. The governments of Europe have very generally assumed the ownership and management of railroads and telegraph and telephone plants. And it would seem that this principle of constitutional construction could be more confidently relied upon to justify government ownership of railroads and other common means of intercommunication, than it would appear to have been in the case in which it was first enunciated.

But while this has not as yet become a practical question in this country, although I confidently believe it will be before the present century has waxed very old, we are not left altogether to conjecture what the answer of the Supreme Court of the United States would be to the constitutional objection to an act of Congress providing for the establishment of the railroads and telegraph lines as government monopolies. For some years ago that court declared[2] that the

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[1] 110 U. S. 421.

[2] Pensacola, etc., R. R. Co. *v.* Western Union Tel. Co., 96 U. S. 1.

power was implied, in the grant by the national constitution of the power to establish post-roads, to make government monopolies of the railroad and the telegraph, and to appropriate to its use the existing lines, in the exercise of the right of eminent domain. This was, of course, only a *dictum*, but it may be taken as a very reliable indication of what the decision of that court will be, whenever the direct question is brought before it for final determination.[1]

But, independently of this construction of the express grant of power to the national government to establish post-roads, I feel confident that the courts would not find it either unreasonable or fantastical to hold that ownership of public utilities is an implied power of the government; implied from the fact that in no other way can the public needs be satisfied, without the violation of the fundamental principles of American constitutional law which are involved in the constitutional guaranties of equal privileges and immunities, and of equality before the law. I can see no escape from the conclusion that these constitutional guaranties are most signally violated when the governments, national and state, grant to private capitalists the complete control of all of the means of intercourse and intercommunication between the people, even though the attempt is made to minimize the economic effect of this government policy by the regulation of these quasi-public corporations through the instrumentality of national and state commissions.

Two points in constitutional law bearing upon the subject of my thesis, I have endeavored to establish: *first*, that the grant of any more or less exclusive or special franchise to a private corporation or individual is a violation of the constitutional guaranty of equal privileges and immunities; and, *secondly*, that there is no constitutional prohibition of the establishment as government monopolies of any business or enterprise which private capitalists cannot undertake without the legislative grant of such a special or exclusive franchise.

The principle of constitutional law which I have advocated in this paper need not be confined in its application to the indispensable arteries of the social organism, such as railroads, bridges, tunnels, the telegraph and telephone, etc. The principle seems to me to be applicable to the governmental control of any of the natural

[1] A similar *dictum* is to be found in State of California *v.* Central Pac. R. R. Co., 127 U. S. 1.

deposits of the earth, such as coal and iron, or the forests. If the legislature of Pennsylvania, in obedience to an overwhelming popular demand, were to provide for the confiscation of the coal mines in that state, in the exercise of the right of eminent domain, and the control and management of them as government property, the courts would not very likely interpose any constitutional objection. This, of course, is a rather academic application of the principle for which I have been contending. In all human probability coal, iron, and other mines will continue indefinitely to be the private property of individuals. For the mine-owners have learned from their recent struggle with the mine-workers' union that they are not omnipotent; and they will be more willing in the future to come to terms with their adversary.

This leads me to the concluding thought in advocacy of government ownership of public utilities. The railroads, telegraph lines, and other means of communication and transportation must be continuous and reliable in their operation, in order that they may prove efficient in the satisfaction of the growing demands of civilized life. Any interruption of their operation by the disputes of the private companies which control them with their employees over wages and terms of hiring, resulting in a strike, interferes with the orderly prosecution of business in a way that the strike in a strictly private business cannot do beyond that particular business. Whatever serious doubts may be entertained concerning the political propriety of such government monopolies, in these days of labor agitation and gigantic railroad and telegraph combinations, when a strike of railroad and telegraph employees may extend over the whole country, stop the wheels of commerce, and produce a widespread commercial paralysis as long as the strike continues, public opinion may not, after a thoughtful consideration of this constant menace to the public welfare, reject the proposition to convert the railroads and telegraph lines into government monopolies.

It is true that, under the theory which was incorporated into our law by the decision in the case of Munn *v.* Illinois[1] and in the Granger cases — that railroads and telegraphs are businesses which are affected with a public interest, and therefore they may be subjected to whatever reasonable regulations may be apparently necessary to promote the public welfare — government intervention for the settlement of strikes and labor disputes between these corporations and their employees would doubtless be justified.

[1] 94 U. S. 136.

Nevertheless, this practical suggestion seems to be pertinent, that, while compulsory arbitration under such circumstances would successfully suppress a strike after it had been ordered by the labor leaders, the facility which that procedure would afford for the constant redress of labor grievances, real and imaginary, would tend to increase rather than to diminish the number of strikes, although they may by such procedure be limited to the initial stages, and their duration curtailed. Furthermore, under such a regime, the government officials who would be charged with the settlement of these labor controversies would become the real managers of the corps of employees, without being made responsible for the successful management of the business. It is an axiomatic truth that any business is exposed to serious danger when power is separated from responsibility. The only consistent and safe policy, if the government is to interfere so actively and extensively in the management of the railroads and telegraphs as this plan of compulsory arbitration would involve, is the conversion of the railroads and telegraphs into government monopolies, so that power and responsibility shall not be divided or separated.

Again, if these important and indispensable agencies of commerce were government monopolies, all of their employees would become, as they are on the continent of Europe, and as the postal clerks are in this country and elsewhere, government employees. Strikes of government employees very rarely occur; and, so far as I know, the United States postal authorities have never had to contend with a strike of their clerks and other employees. Apart from the fear of the power of the government to force them to submission, which undoubtedly would in a measure restrain them from striking, even when the provocation was great, government employees are more readily satisfied with the same wage and the same terms of service. The socialistic antipathy which is now so prevalent to the appropriation by private capitalists of any of the profits of labor, as labor agitators estimate and describe them, and which is so powerful a lever for the creation of discontent in the case of private employment, would then be absent, inasmuch as the profits of the business of railroads, telegraphs, electric and gas-light plants, etc., would then be taken by the government for the benefit of the whole people.

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